COMMENT.

THE MOLINEUX CASE.

The fact that the appeal papers in the Molineux case are now practically completed makes pertinent some allusions to the existing misconceptions relating to this celebrated case. It would occasion but little surprise if these misconceptions existed only in the public mind, since the prominence of the parties concerned, the enormous cost of the prosecution entailed to the State, and the space devoted in the public prints, have combined to obscure the legal issues involved.

In the Molineux appeal now pending, the appellant mainly relies upon the alleged wrongful admission of the Barnet evidence. Apart from its justification in this particular case, the principle of the admission of collateral evidence can be examined in the light of abundant precedent and judicial decision.

It is one of the distinguishing principles of the English law of evidence that the State cannot prove other independent crimes—except in rebuttal under certain circumstances—merely for the purpose of showing the general depravity of the defendant or to serve as the basis of an inference that he committed the crime in question. It may be stated that this rule is qualified to the extent that evidence of an independent crime is admissible when it is committed as part of the same common purpose. In such a case, the test of admissibility is not its criminality, but its relevancy. Precedent acts that are relevant and material are clearly admissible, and but little reasoning should suffice to show that such acts should not be precluded merely because they happen to be criminal.

Many suppose the Barnet evidence was allowed to go to the jury because, in the opinion of the trial judge, it came within the foregoing principle. They argue, and with reason, that neither the same motive nor a common purpose existed in the two cases, nor were the acts in the same chain that led up to the case on trial. It is very probable that if the admissibility of the Barnet evidence were defended on this ground alone, it would be open to serious exception.

But we are satisfied that the State will urge the propriety of its admission on a different ground. It will urge that on account of the peculiar manner of Barnet's death, his relations with the accused, and other connecting circumstances, a sufficient foundation was laid for the introduction of the so-called Barnet evidence; that it was simply a decision by the Court on a preliminary question of fact as to whether this evidence should properly go to the jury. In such a case it does not devolve on the State to prove beyond all doubt and question that the defendant has committed a prior crime. It yet remains the duty of the jury to weigh the evidence for what it is worth, and they must still be satisfied, beyond a reasonable doubt, as to the guilt of the accused as charged in the indictment.

As to the relation the particular facts in the Molineux case bear to these principles of the law of evidence, we, of course, do not presume to state. We may, however, be assured that the entire matter is in safe custody and confidently expect a careful and luminous exposition of the law on the subject.

STATE GAME LAWS—IMPORTATION UNDER.

The close check that the Federal Commerce Clause puts upon State legislation is again illustrated by two recent cases involving the right to make possession of game unlawful during the close season. A law of New York is declared unconstitutional so far as it applies to imported fish. *People* v. *Buffalo Fish Co.*, 58 N. E. 35. This overrules *Phelps* v. *Racey*, 60 N.Y. 10, where, under a similar law, a defense that the game had been imported from Illinois and Minnesota was held unavailing, it would seem because Congress had not legislated thereon. This latter is no longer law. The right to regulate foreign and inter-State commerce is given to Congress and imposes upon the States the duty not to interfere. So a State cannot prevent the importation of liquor. *Leisz* v. *Hardin*, 135 U. S. 100. The same doctrine was again applied in *Minnesota* v. *Barbour*, 136 U. S. 313, where it was held incompetent for a State to exclude beef killed outside of the State, by compelling an inspection twenty-four hours before the killing. The latest pronouncement is that a State cannot exclude a healthy product like oleomargarine. *Schollenberger* v. *Pennsylvania*, 171 U.S. 1. It would seem, therefore, that if the States are powerless to prohibit the importation of liquor and oleomargarine, which they deem injurious to the public welfare, or to provide inspec-